Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review	)	IB Docket No. 98-148
Reform of the International Settlements	)	
Policy and Associated Filing Requirements	)	
	)	
Regulation of International	)	CC Docket No. 90-337
Accounting Rates	)	
	)	

REPLY COMMENTS OF AMERITECH

Ameritech hereby replies to the initial comments filed in response to the Commission's Notice of Proposed Rulemaking ("Notice"), FCC 98-190, released August 6, 1998, in the above-captioned docket. In the Notice, the Commission proposed significant changes to its International Settlements Policy ("ISP") and associated rules in light of recent changes in the global telecommunications marketplace.

Ameritech concurs that the growth of competition in foreign destination markets and the downward trend in international settlement rates makes a review and modification of the Commission's ISP timely. Ameritech is, however, concerned that the Commission's proposals would remove the ISP on routes where the market is not yet sufficiently open to competitive entry to ensure market discipline and reduce settlement rates towards cost, or where cost-based settlement rates have not yet been implemented, increasing the risk of anticompetitive harm in the U.S. international services market. On such routes, the ISP, and other safeguards, remain necessary to prevent whipsawing and discriminatory settlement arrangements, as well as to prevent one-way bypass, which

would raise settlement costs for U.S. carriers, and therefore increase consumer rates. Accordingly, Ameritech supports the adoption of the Commission's proposals, with certain modifications.

I. The Commission Should Reject Calls to Expand its Proposals to Eliminate the ISP.

In the opening round of comments, virtually all of the commenters supported the Commission's proposals to eliminate the ISP for arrangements between U.S. carriers and foreign carriers that lack market power in WTO countries.[1] There was widespread agreement among these parties that foreign carriers that lack market power cannot whipsaw U.S. international carriers and threaten competition in the U.S. international services market since U.S. carriers could always find alternate means to terminate U.S. traffic, and therefore that removal of the ISP would be appropriate.[2]

Several parties, however, asserted that the Commission's proposals do not go far enough, and urged the Commission to expand significantly its proposal to eliminate the ISP. GTE, for example, urges the Commission to eliminate the ISP and associated filing requirements on all routes between the United States and WTO-member countries, regardless of the market shares of the foreign correspondent carriers involved or the state

[1] *See* Bell Atlantic Comments at 1-2, BellSouth Comments at 2, SBC Comments at 1-2, AT&T Comments at 1-2, MCI Worldcom Comments at 2, Sprint Comments at 3, Telegroup Comments at 4, Qwest Comments at 1-3, Americatel Comments at 1, TRA Comments at 2, CTA Comments at 2-3, BTNA Comments at 2, Telia NA Comments at 5, Cable & Wireless Comments at 7, RSL Com Comments at 3, Teleglobe Comments at 2.

[2] *See* Bell Atlantic Comments at 1-2, BellSouth Comments at 2, SBC Comments at 7, MCI WorldCom Comments at 2, Sprint Comments at 3, Qwest Comments at 1, CTA Comments at 6, BTNA Comments at 3, Telia NA Comments at 5, Cable & Wireless Comments at 7, Teleglobe Comments at 2, Prime Tec Comments at 4.

of competition in the foreign market.[3] GTE argues that the ISP, which was established to prevent whipsawing and other anticompetitive behavior, is an anachronism in markets (such as WTO countries) in which new entry is lawful and bypassing onerous settlement arrangements is possible.[4] ntta.com similarly contends that the Commission should eliminate the ISP on all WTO routes, arguing that the Commission should rely instead on foreign countries' compliance with their obligations under the WTO agreement, dispute resolution procedures under the GATS agreement, and the Commission's enforcement procedures to prevent whipsawing and other anticompetitive behavior.[5]

Cable & Wireless exhorts the Commission immediately to expand the routes on which ISR is permitted, particularly for WTO member country routes, and to "discard the ISP and its filing requirements on routes where ISR has been permitted."[6] If the ISP is not completely removed for WTO routes, Cable & Wireless would have the Commission eliminate the ISP for any arrangement between a U.S. carrier and a foreign carrier that lacked market power, regardless of whether the U.S. carrier is classified as dominant on the route or affiliated with the foreign carrier.[7]

While Ameritech agrees that the WTO principles go a long way to ensuring fair competition, these proposals should be rejected because they would fail to protect adequately against discrimination by foreign carriers, or other anticompetitive behavior. The mere fact that a country is a signatory to the WTO Basic Telecommunications

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[3] GTE Comments at 2.

[4] GTE Comments at 8-9.

[5] ntta.com Comments at 6-7.

[6] Cable & Wireless Comments at 2-6.

[7] *Id.* at 7-8.

Agreement does not mean that it has actually opened its market to competitive entry, much less that competition has developed sufficiently to drive settlement rates to cost. Nor does it mean that a country has implemented transparent, nondiscriminatory, cost-based accounting rates. As AT&T aptly observes, while "a number of WTO Member countries have opened their markets, and a few have also reduced settlement rates to levels approximating cost, . . . competitive conditions in most WTO Member countries differ little from those that originally required the adoption of the ISP."[8]

The WTO dispute resolution procedures are wholly inadequate to prevent whipsawing and other anticompetitive behavior. Although the Uruguay Round reforms were intended to expedite the resolution of disputes, the process is still cumbersome and lengthy. For example, it can take approximately two years from the time a party initiates the process to obtain a decision on a dispute. Even then, a party has up to 18 months to comply with an adverse WTO decision, during which time there is no right to retaliation or other compensation.[9] The Commission's dispute resolution procedures would fare no better. If the Commission removes the ISP and associated filing requirements for all WTO countries, it would be difficult, if not impossible, for the Commission to identify and remedy anticompetitive behavior, such as discrimination or whipsawing. Consequently, the WTO and Commission enforcement procedures would be insufficient

[8] AT&T Comments at 6. As AT&T notes, only 52 WTO member countries made commitments to open their markets for international services, including 22 whose commitments will not be effective for up to 8 years, and 28 who committed to open their markets to competition on January 1, 1998. *Id.* (citing *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Order and Notice of Proposed Rulemaking, FCC 97-142 at para. 62 (rel. Jun. 4, 1997), and Notice at para. 15). AT&T further notes that, just two months ago, the Commission reported that only 18 WTO member countries had more than one carrier with accounting rate arrangements with U.S. carriers. *Id.* (citing *IMTS Accounting Rates of the United States, 1985-1998* (rel. Aug. 1, 1998)).

[9] WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, Uruguay Round Trade Agreements, House Document 103-316, Vol. 1, 103rd Cong., 2d Sess. 1654 (1994).

to prevent carriers from concluding settlement arrangements that adversely affect competition in U.S. international services.

The proposals to expand the elimination of the ISP, like those offered by the Commission, also would provide no safeguard against the potential anticompetitive effects of permitting a U.S. carrier to negotiate secret, special concessions in an alternative settlement arrangement affecting a substantial portion of traffic along a particular international route. In particular, they would do nothing to prevent such a carrier from obtaining an unfair advantage over other U.S. carriers, undermining competition in the U.S. international services market.[10] For this reason, Ameritech urged the Commission to modify its proposal to ensure that U.S. carriers could not conclude such unique settlement arrangements. Specifically, Ameritech urged the Commission to modify its proposals, consistent with the safeguards adopted in *Flexibility Order*, to eliminate the ISP only: (1) for settlement agreements that affect less than 25 percent of the traffic on a particular route and which are between U.S. carriers and foreign carriers from WTO member countries that permit multiple operator entry to the relevant foreign telecommunications markets; or (2) for routes where transparent, nondiscriminatory, cost-based international termination charges are available on both ends of the route, regardless of whether carriers at either end possess market power.[11] This approach would

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[10] *See* Ameritech Comments at 3; *Regulation of International Accounting Rates*, CC Docket No. 90-337, Phase II, Fourth Report and Order, 11 FCC Rcd 20063, 20081 (1996) (*Flexibility Order*) (acknowledging that a U.S. carrier that negotiates a settlement arrangement affecting a significant portion of traffic along a particular route "may be in a position to extract anticompetitive special concessions from foreign carriers to the detriment of other U.S. carriers").

[11] Ameritech Comments at 4. Sprint suggests that the Commission lift the ISP for arrangements with dominant foreign carriers involving more than 25 percent of relevant traffic if certain conditions are met, including that the settlement rate on the route is at or below the "best practices" rate of $0.08. Sprint Comments at 7. Similarly, MCI would eliminate the ISP for arrangements with all foreign carriers on WTO routes in which at least 50 percent of the traffic on the route is settled within 2 cents of the best

remove the ISP only where the market is sufficiently open to permit competitive entry, or where cost-based termination arrangements have been implemented. It would, accordingly, encourage innovative, efficient settlement arrangements and lower consumer rates, while preventing arrangements that could adversely affect competition in the U.S. market.[12] Moreover, as Ameritech explained in its comments, eliminating the ISP on routes where nondiscriminatory termination rates are available on both ends of the route would afford carriers flexibility to enter alternative settlement arrangements on a broader range of routes than would be permitted under the Commission's proposals, while preventing carriers at either end of the route from leveraging any market power they might possess to disadvantage competing carriers.[13]

The criteria proposed by Ameritech are also more appropriate bases for eliminating the ISP than the availability of ISR. As Ameritech pointed out in its initial comments, the ISR provides no assurance that U.S. carriers will pay cost-based rates to terminate international traffic in foreign countries.[14] In contrast, published cost-based termination charges and settlement arrangements in countries that permit multi-carrier

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practices rate. MCI Comments at 6. As Sprint correctly observes, "where settlement rates approach cost, the risk of harm to competition in the U.S. market is significantly diminished." Sprint Comments at 8. Sprint's and MCI's proposals to grant ISP relief where settlement rates are at or near the best practices rate are, therefore, steps in the right direction. Nevertheless, the real solution is to reduce settlement rates to actual cost, and not just to some interim, proxy level. Accordingly, the Commission should bypass the interim solutions proposed by Sprint and MCI and eliminate the ISP only under the conditions identified by Ameritech.

[12] Applying the 25 percent threshold adopted in the *Flexibility Order* would ensure that a U.S. carrier could not use such an arrangement to obtain an unfair advantage in the U.S. market.

[13] Ameritech Comments at 4-5.

[14] *Id.* at 5. Several other comments expressed serious concerns over the wholesale lifting of the ISP on ISR routes. *See e.g.* AT&T Comments at 8-10; MCI Comments at 4-7 ("use of the current ISR standard for removal of the ISP for a particular route is inappropriate and will result in significantly increased one-way bypass," because "settlement benchmarks are well above the true cost of terminating international traffic," making it highly profitable to engage in one-way bypass when the benchmark is reached, "with no resulting downward pressure on settlement rates"); Sprint Comments at 6-7; TRA Comments at 5-6.

entry, and which do not affect a significant proportion of the traffic on a particular route, are much more likely to result in cost-based settlement rates.[15]

II. The Commission Should Retain its Flexibility Policy Safeguards.

In the Notice, the Commission expressed concern that its existing flexibility policy, in particular its filing requirements, may inhibit carriers from negotiating alternative settlement arrangements. It therefore sought comment on whether it should modify its flexibility policy to encourage more carriers to negotiate alternative settlement arrangements.[16] It tentatively concluded, however, that it should retain its flexibility policy safeguards to protect against potential anticompetitive actions by foreign and U.S. carriers with a significant share of their markets,[17] and sought comment on this issue.

Most of the commenters addressing the issue support the Commission's tentative conclusion that the flexibility safeguards should be retained. These parties agree with Ameritech that, where the ISP is retained (*i.e.*, where cost-based termination rates have not yet been implemented, and competitive entry is not truly possible), the public filing safeguards are necessary to ensure that alternative settlement arrangements are not discriminatory and will not adversely affect competition in U.S. markets.[18]

AT&T strongly opposes retention of the safeguards, claiming that it suffers a significant competitive disadvantage because, it asserts, it cannot use flexible

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[15] *Notice*, FCC 98-190 at para. 5.

[16] *Notice* at para. 33.

[17] *Id.* at para. 34.

[18] Ameritech Comments at 6; CompTel Comments at 10 ("these modest, minimum safeguards are necessary due to the possibility that carriers with large traffic volumes could negotiate preferential or otherwise discriminatory arrangements that could undermine competitive conditions in the U.S. international telecommunications marketplace."); Bell Atlantic Comments at 5-6; SBC Comments at 3, 13; and Prime Tec Comments at 3-7. and Prime Tec Comments at 3-7.

arrangements to lower settlement rates for all of its traffic on a route.[19] The Commission should reject AT&T's self-serving claims and retain the safeguards as Ameritech proposed in its comments. Under the Commission's existing flexibility policy, AT&T is free to enter into flexible settlement arrangements. The only requirements are that it must publicly file a copy of any such arrangement that affects more than 25 percent of the inbound or outbound traffic on a particular route, and such an arrangement may not contain unreasonably discriminatory terms and conditions. These requirements are hardly onerous, and do not appear to have adversely affected AT&T in any significant way, given the fact that it retains an overwhelming share of the traffic on most international routes. Moreover, the beneficial effects of requiring full transparency for such contracts (in terms of preventing discriminatory or other anticompetitive conduct, and promoting the efficient operation of the market), more than outweigh any marginal procompetitive effect that might result from the elimination of the flexibility policy safeguards.[20] Accordingly, to the extent a carrier remains subject to the ISP, or an alternative settlement arrangement covers more than 25 percent of the traffic on a particular route, the carrier should continue to be required to file publicly copies of the arrangement, or summaries of the contents thereof, with the Commission.

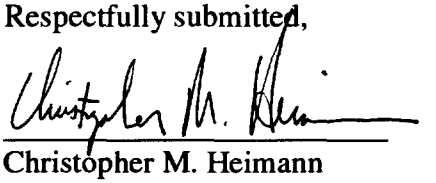
[19] AT&T Comments at 26.

[20] For this reason, Ameritech opposes MCI's and Sprint's proposals to permit carriers that conclude alternative settlement arrangements affecting more than 25 percent of the inbound or outbound traffic on a particular route to file such agreements confidentially. *See* MCI Comments at 7, 13; Sprint Comments at 5.

III. Conclusion.

For the reasons set forth above, and in Ameritech's initial comments, the Commission should reform the ISP and associated rules consistent with the modifications recommended by Ameritech.

Respectfully submitted,



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October 16, 1998

CERTIFICATE OF SERVICE

I, Anisa A. Latif, do hereby certify that a copy of the Reply Comments of Ameritech has been served on the parties attached via first class mail - postage prepaid, on this 16th day of October 1998.

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